

**ALASKA STATE LEGISLATURE  
SENATE JUDICIARY STANDING COMMITTEE**

February 18, 2019

1:32 p.m.

**MEMBERS PRESENT**

Senator Shelley Hughes, Chair  
Senator Lora Reinbold, Vice Chair  
Senator Peter Micciche

**MEMBERS ABSENT**

Senator Mike Shower  
Senator Jesse Kiehl

**COMMITTEE CALENDAR**

**SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12**

"An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date."

- HEARD & HELD

**SENATE BILL NO. 35**

"An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

- HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 12

SHORT TITLE: ASSAULT; SEX OFFENSES; SENTENCING CREDIT

SPONSOR(s): SENATOR(s) MICCICHE

|          |     |   |
|----------|-----|---|
| 01/16/19 | (S) | PREFILE RELEASED 1/7/19                 |
| 01/16/19 | (S) | READ THE FIRST TIME - REFERRALS         |
| 01/16/19 | (S) | JUD, FIN                                |
| 02/13/19 | (S) | SPONSOR SUBSTITUTE INTRODUCED-REFERRALS |
| 02/13/19 | (S) | JUD, FIN                                |
| 02/13/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg)       |
| 02/13/19 | (S) | Heard & Held                            |
| 02/13/19 | (S) | MINUTE(JUD)                             |
| 02/15/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg)       |
| 02/15/19 | (S) | Scheduled but Not Heard                 |
| 02/18/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg)       |

BILL: SB 35

SHORT TITLE: CRIMES;SEX CRIMES;SENTENCING; PAROLE

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

|          |     |                                   |
|----------|-----|-----------------------------------|
| 01/23/19 | (S) | READ THE FIRST TIME - REFERRALS   |
| 01/23/19 | (S) | JUD, FIN                          |
| 02/13/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/13/19 | (S) | Heard & Held                      |
| 02/13/19 | (S) | MINUTE(JUD)                       |
| 02/15/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/15/19 | (S) | Heard & Held                      |
| 02/15/19 | (S) | MINUTE(JUD)                       |
| 02/18/19 | (S) | JUD AT 1:30 PM BELTZ 105 (TSBldg) |

#### **WITNESS REGISTER**

CARMEN LOWRY, Ph.D., Executive Director

Alaska Network on Domestic Violence and Sexual Assault

Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of SB 12 and SB 35.

ELIZABETH WILLIAMS, Cofounder

No More Free Passes

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and SB 35.

KEELEY OLSON, Executive Director

Standing Together Against Rape (STAR)

Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and SB 35.

VICTORIA SHANKLIN, Executive Director  
Victims for Justice  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and SB 35.

KATIE BOTZ, representing herself  
Juneau, Alaska

**POSITION STATEMENT:**

DIANE SCHENKER, representing herself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and 35.

MICHELE VASQUEZ, representing herself  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and suggested an amendment for SB 35.

MIKE COONS, representing self  
Palmer, Alaska

**POSITION STATEMENT:** Testified in support of SB 35.

TANIA SILVA-JOHNSON, representing herself  
Kodiak, Alaska

**POSITION STATEMENT:** Testified in support of SB 12 and SB 35.

JOHN SKIDMORE, Director  
Criminal Division  
Department of Law  
Anchorage, Alaska

**POSITION STATEMENT:** Presented a sectional analysis for SB 35.

## **ACTION NARRATIVE**

[1:32:37 PM](#)

**CHAIR SHELLEY HUGHES** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Reinbold, Micciche, and Chair Hughes.

**SB 12-ASSAULT; SEX OFFENSES; SENTENCING CREDIT**  
**SB 35-CRIMES;SEX CRIMES;SENTENCING; PAROLE**

[1:33:13 PM](#)

CHAIR HUGHES announced that the order of business would be invited and public testimony for SB 12, SPONSOR SUBSTITUTE FOR SENATE BILL NO. 12, "An Act relating to crime and criminal procedure; relating to assault and sexual assault; relating to harassment; relating to credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring; and providing for an effective date," and

SENATE BILL NO. 35, "An Act eliminating marriage as a defense to certain crimes of sexual assault; relating to enticement of a minor; relating to harassment in the first degree; relating to harassment in the second degree; relating to indecent viewing or production of a picture; relating to the definition of 'sexual contact'; relating to assault in the second degree; relating to sentencing; relating to prior convictions; relating to the definition of 'most serious felony'; relating to the definition of 'sexual felony'; relating to the duty of a sex offender or child kidnapper to register; relating to eligibility for discretionary parole; and providing for an effective date."

CARMEN LOWRY, Ph.D., Executive Director, Alaska Network on Domestic Violence and Sexual Assault (ANDVSA), stated her presentation specifically would deal with strangulation because of its prominence with informing these bills. ANDVSA was established in 1977 when five programs merged to become more effective. Today it has 24 members from across the state and is driven by its mission to be a collective movement to end violence and oppression through social change.

DR. LOWRY said she was originally from western Kentucky. She started as a children's advocate in 1990 at a Seattle shelter and then worked in Bethel in the Tundra Women's Coalition from 1992-97. She continued working on issues of gender-based violence and domestic and sexual violence in humanitarian settings that included Darfur, Burma, Lebanon, Iraq, and East Timor. She earned a doctorate in communications in 2013. She moved back to Alaska in 2016. Her goal is to be a technical resource for the committee and to work with the network and member programs so they can also provide technical assistance to the committee.

DR. LOWRY thanked the committee for their legislative responses to the [Justin] Schneider case and to the impact of strangulation, which has been very much a part of Ashley Johnson-Barr's case. With respect to SB 12, the network is pleased that the three major impacts to Alaska's sexual assault laws that Senator Micciche explained in his sponsor statement are all impacts they agree with: one, requiring that

strangulation to the point of unconsciousness is defined as assault in the first degree; two, to eliminate credit toward time served for electronic monitoring or private residence for sexual assault convictions; and three, classifying unwanted contact with semen as a sexual crime.

1:38:12 PM

DR. LOWRY said SB 35 has close parallels and addresses similar concerns. These will have a demonstrable impact on sexual assault laws. SB 35 amends the definition of sexual contact to include contact with semen and makes unwanted contact with semen a sexual offense, requires registration as a sex offender, enhances strangulation sentencing, revises the out-of-state sex offender process to require people who have been registered in other states to register in Alaska, and addresses the marriage defense of sexual assault.

DR. LOWRY said she wanted to share information because strangulation is so prominent in both bills and is such a deadly tactic. She shared some excerpts from an opinion piece that she and Dr. Tracey Wiese had written:

Strangulation results in cerebral hypoxia – this means that there is not enough oxygen delivered to the brain to maintain the functioning of the brain and results in a loss of consciousness. A victim who is being strangled may lose consciousness in as little as 10 seconds – seconds that are often filled with confusion, disorientation and disbelief and often a feeling of, "I will die."

If victims consistently experience bouts of non-fatal strangulation where critical areas of the brain do not get enough oxygen or neurological input, they may experience diminished brain functioning resulting in memory loss and minor strokes.

Dr. Nancy Glass reported in 2008 that non-fatal strangulation is an important risk factor for homicide in domestic violence victims. This means that when victims report that their partners have "choked" them – even if there are no marks – those victims are at higher risk of being murdered by their partner.

1:40:58 PM

DR. LOWRY said strangulation often leaves no marks. Partners don't have to squeeze, but just have to apply pressure. That is why training and awareness are so important. They need to

remember that victims are not choked, they are strangled. That is why terminology is so important.

DR. LOWRY said that data from the 2017 Alaska Felony Level Sex Offense Crime report shows that the felony level sexual offenses for perpetrator and victim are being experienced by younger people and victims and suspects are disproportionately Alaska Native. The most common age for victims ranged from 12 to 19 years old. Out of the nearly 1,500 victims reporting in 2017, 45 percent were Alaska Native females. The most common age for suspects was from 17 to 28 years old. Out of the 1,442 suspects, 36 percent were Alaska Native, and 95 percent of all suspects were male. In 97 percent of the 1,500 incidents of felony level sexual offense, the victim and suspect knew each other. She called that chilling. About 76 percent of the incident locations were reported as a residence or home.

DR. LOWRY concluded by stating there is lots of information and data. They are about to move forward and make decisions based on the information they know. "We can change this," she said.

CHAIR HUGHES asked her to give some background on the Ashley Johnson-Barr case.

1:43:51 PM

DR. LOWRY said the earliest news stories about the Barr Case referenced a report that she was discovered with ligature marks on her. Dr. Lowry said she had to look up what that meant. Those are marks are made by tying something around, whether a rope or a cord. There are two different types of strangulation. One is manual when people use their hands, arms, or foot to apply pressure. The other is when something is wrapped around to stop the flow of oxygen. She was struck by how painful that must have been.

SENATOR REINBOLD asked if she were testifying for or against the bill.

DR. LOWRY said the network was not prepared to take a firm stance. They are very much in support of all the elements of the bill. Since they are a membership-based organization, she must go through committees to make sure the network is in agreement, so that when she says the network is in support, the committee will know that all members are in support. They have a meeting tomorrow and should be able to submit letters clearly articulating what they do support.

SENATOR REINBOLD asked her to submit any ideas for amendments.

1:46:32 PM

ELIZABETH WILLIAMS, Cofounder, No More Free Passes, Anchorage, stated that No More Free Passes is a nonpartisan advocacy group founded in September 2018, the day after the Justin Schneider sentencing. The crime that he committed was so horrible that it sparked state and national outrage. It was covered by smaller papers and the New York Times, the Washington Post, and Al Jazeera. The state of Alaska's response was shockingly inadequate. They felt that mistakes were made by the prosecutors, mistakes in law have been in place for decades, and mistakes were made by the judge and by the state in their response to the public outrage. They were grateful when former Governor Walker proposed legislation to close the semen loophole, but that did not go far enough. That is why the group formed and why they are focusing on legislative advocacy.

MS. WILLIAMS said they felt, as Governor Walker had proposed, that the semen loophole had to be closed, that nonconsensual contact with semen needed to be included in the definition of sexual contact. What really haunted her was that the other part of the assault also received no jail time. That was strangulation. The fact that Justin Schneider's victim passed out thinking she would die and that his eyes were the last thing she would see and the fact that she is now at risk for TBI [traumatic brain injury], PTSD [post-traumatic stress disorder], amnesia, depression, anxiety, mood changes keep her up at night, and the fact that the state of Alaska thought that he deserved zero jail time.

MS. WILLIAMS explained that strangulation has been described as the waterboarding of domestic violence. Nothing is more terrifying than the feeling of being unable to breathe with an inability to fight this person off. A lot of strangulation takes place in the home with children around. She was a social worker in Bethel for a year and a half. She worked with lots of children. One of the worst things that children would tell her was that "daddy chokes mommy." Exposure to domestic violence is the most negative thing that can happen in a child's life. It is more negative than children actually experiencing physical violence themselves. That is why she asks that strangulation be taken extremely seriously in the criminal code.

MS. WILLIAMS asked what can be done about strangulation and sexual assault. She did not believe incarceration was the answer to everything, but incarceration gives a victim time to get her

life back together, not just go to a shelter for a few weeks and return to that home. She could have time to get a job and get her own house. Incarceration means a number of years in which children are not going home to a war zone. The third portion of SB 12 eliminates credit for electronic monitoring. Credit for electronic monitoring came about in 2015 through HB 15. SB 12 would eliminate it for sexual assault offenses. They believe that sexual assault should equal jail time, not time spent at home. Justin Schneider spent the total of his sentence, one year, sitting in a luxury home overlooking Kachemak Bay.

MS. WILLIAMS said that giving credit for time spent on electronic monitoring at home means defendants have an incentive to delay a trial for as long as possible. They can be convicted, but they may have already served much of their sentence at home. That incentive to delay trials is terrible for victims. A victim might have the motivation to report her assault the morning after and testify before a grand jury or at a bail hearing, but to expect her to come back three years later to testify about something she wants to forget is too much to ask. It is also bad for the public. People facing trial at home still have access to children, unless a judge has specifically forbidden contact, and the public.

MS. WILLIAMS said that her group supports both bills. SB 12 and SB 35 will work together well. SB 12 will make assault where loss of consciousness can be proven assault in the first degree, the most serious type of assault. Where loss of consciousness cannot be proven, it will still be assault in the second degree. SB 35 increases the sentencing range, so prosecutors will have two different tools. Alaska needs action, not awareness. Alaska has done awareness campaign after awareness campaign and authored study after study. The time for that is over. They have the numbers. Alaska is the worst in the nation. It is time make real change.

SENATOR REINBOLD thanked Ms. Williams for her insights into the law.

1:54:09 PM

SENATOR MICCICHE said the public was mortified, angry, and sitting around in disbelief about the Schneider case, but a lot of people didn't know what to do from there. Ms. Williams mobilized, put the right folks together, and called policy makers. He said she had helped to motivate him. They had been looking at where to go since the incident. She helped motivate him on not trying to change the entire criminal justice world,



but to fix what happened with the Justin Schneider case. That's what this bill is about because the public deserves that. They need to know that this is not going to happen again. He thanked her for her help in keeping pinpoint focus on this case over which so many Alaskans lost their faith in the system. "We can bring them back by letting them know that when these things occur, we're going to stop them," he said.

1:56:26 PM

KEELEY OLSON, Executive Director, Standing Together Against Rape (STAR), Anchorage, thanked the committee for advancing these bills which address loopholes in state statute. Each of the loopholes addressed by the bill are policy priorities set by STAR. They illustrate the dire need across the state to hold sexual predators accountable. She cannot agree more strongly with these proposed bills. She wanted to give examples to show the importance of updating these statutes.

MS. OLSON said she imagined that SB 12 was drafted with the tragic murder of young Ashley Johnson-Barr in Kotzebue and the unfortunate sentencing of Justin Schneider in mind. Strangulation is a hideously common form of violence used in conjunction with sexual assault. Traumatic brain injuries in survivors can be attributed to strangulation to the point of unconsciousness, sometimes repeatedly. She recounted a story of working with a young woman years ago who had come to the STAR office for assistance. She had been strangled during a sexual assault, released from the hospital, but collapsed at the office and never regained consciousness and died. Her offender was not held accountable. Richard Dale Abrahamson was a registered sex offender from Iowa. He told police he moved to Alaska for a fresh start in 2016. He thought he did not have to register in Alaska. This was before the supreme court ruled that registered sex offenders from other jurisdictions would have to register. He is accused of sexually abusing a 13-year-old boy within days of his arrival. Even though he made admissions of abuse and there was filmed abuse on his camera, the case just went to trial at the end of January 2019, nearly three years later. He is awaiting sentencing and appears to have been acquitted of some of the charges.

MS. OLSON said that the Justin Schneider case illustrated the need to include masturbation without consent as a sex offense. The only concern she has about the current wording in the bill is whether it requires the offender climax to be considered a sex offense. The current wording is "to engage in masturbation and ejaculate on a person without the consent of that person."

She asked that if they were looking at the Schneider case, if he had not climaxed, would the victim be any less sexually assaulted. She suggested considering "masturbation without consent for the purpose of sexual gratification" rather than requiring ejaculation as a factor in the law.

MS. OLSON said that removing the marriage defense is a critical need. There have been several cases of sexual assault in the second degree in Anchorage that fell under this pattern. STAR assisted a woman who had had gynecological surgery and told to abstain from sex for four weeks. Within days of surgery she was raped by her spouse while she was on sleep medication and unable to consent. She required emergency medical treatment, and he was never charged with sexual assault. The marriage defense for sexual assault in the second degree is problematic, especially for estranged couples who, for financial or abuse reasons, elect to remain married and live together. This is more of a burden for low-income people and victims of abuse whose spouses refuse to initiate divorce.

SENATOR REINBOLD said her testimony really makes them want to get the bills to the finish line. She asked her to let them know of any loopholes that she sees.

CHAIR HUGHES said that they would follow up with her question with the Department of Law about the language about climax.

SENATOR MICCICHE said folks need to understand that just because they might have learned about strangulation being used as a method of sexual assault in the Justin Schneider case, it is not a rare tactic.

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VICTORIA SHANKLIN, Executive Director, Victims for Justice, Anchorage, said her organization serves victims of violent crime, especially victims of assault, arson, robbery, and homicide. Unfortunately, it's not uncommon for offenders in their cases to have had priors and for those to not have been taken as seriously as they should have been. They support SB 12 and SB 35 and anything that strengthens the system prior to the crimes resulting in a homicide.

SENATOR REINBOLD asked how the organization is funded and whether they have the resources they need to deal with the incredibly high rise in crime and victims.

MS. SHANKLIN replied that that they are a small organization with four full-time employees and one part time. They are working on increasing that. With the increase in homicides and the number of people who are impacted, it is a struggle for them. They are funded by a series of state, federal, and municipal grants. One quarter of their budget comes from individual donations.

CHAIR HUGHES thanked the testifiers and said she knew that they would like to work themselves out of a job. As was stated earlier, it is time to create action.

2:08:07 PM

CHAIR HUGHES opened public testimony.

KATIE BOTZ, representing herself, Juneau, said she originally was from Kodiak. She recounted how she was a victim of sexual abuse at the age of 12 in her home. As many statistics show, victims often know the person. In this case, it was a friend of her brother's. She was 12, and he was 18. The abuse included being strangled. Her mother finally caught him in the act. This devastated her mother, which broke Ms. Botz' heart. Her mother kicked him out and called the cops. After going to court and having the rape kit done, to this day she wishes he had more than six years in prison. She remembers it as if it were yesterday. For five years every night, she cried herself to sleep. It took her 12 years to recover from her abuse. She read SB 35 line by line. As a victim of sexual abuse, she supports it. Alaska has the highest sex crime rate in America. If protecting the public is in the best interest of the government, Lower 48 residents coming to Alaska shouldn't be limited to register under AS 12.63.100. All Alaskans residents should have the right know who they are associating with. Incitement of a minor is still a crime, regardless of how it is committed. Regarding Section 6, people should be properly identified as a sex offender. Regarding Section 7, line 27, of SB 35, sexual harassment is not only embarrassing but authorities often don't have proper respect for it, which makes it difficult for victims to go to a supervisor. She asked the committee to have something to help victims feel more comfortable reporting sexual harassment. Regarding Section 14, imprisonment of less than ten years does not do justice for victims. The defendant will have freedom in less than 10 years, but the victim has lifelong knowledge that she was abused. She urged a sentence of 20 years for victims aged 13 years and older and 30 years for victims under 13, so that victims can have peace of mind.

CHAIR HUGHES thanked her for her brave testimony. It hit them at the heart level and at the head level and they know work is needed.

SENATOR REINBOLD said only one percent of rapists end up in jail in Alaska, according to the statistics. That crushes her heart. Ms. Botz made some excellent points. A lot of the criminal justice system does not focus on victims.

SENATOR MICCICHE said he appreciated her courage. She is helping to save others by being there. Section 14 is a subset for the more serious crimes they are dealing with. In both bills, longer terms can be extended for aggravators.

2:17:52 PM

DIANE SCHENKER, representing herself, Anchorage, said she supported both bills. She said she is ashamed of her home state for having such poor laws that Justin Schneider was allowed to kidnap, strangle to unconsciousness, and ejaculate on a woman and then waltz out of the courtroom with zero jail time. She cannot fully convey her anger, resentment, and sheer fatigue from being female in a state that has been the nation's worst for tolerating violence against and disrespect for women. She spent 30 years working in Alaska's criminal justice system, including eight years as a correctional officer and sergeant working in the state's first institutional sex offender treatment program. She has rarely seen sex predators held fully accountable for the lifelong damage they cause their victims. In the last several years, their laws have become even more unbalanced in favor of criminals over victims. She said to never underestimate the power of sexual predators, who are master manipulators, to get people to feel sorry for them. These bills finally take steps in the right direction. She urged them to break records to pass them quickly, just as voters in the third judicial district broke records unseating a judge who failed to protect their interests.

MICHELE VASQUEZ, representing herself, Soldotna, Alaska, said she supports SB 12, which closes the Schneider loophole in the Alaska criminal code. Most in Alaska were outraged when Justin Schneider walked out of court with time served on an ankle monitor as his only punishment after he kidnapped and strangled a woman and performed a sexual act over her unconscious body. This was a violent sexual assault. No who commits such an act should be allowed to walk away without serving time. She would like an amendment to SB 35 to protect sex workers from sexual assault or coercion into sex acts by some in law enforcement

prior to arrest. The state must do everything in its power to protect all from any kind of sexual assault, abuse, or coercion.

2:21:38 PM

MIKE COONS, representing self, Palmer, stated his support for SB 35 but wants to see tougher sentencing. He said section 15, page 7, lines 15-17, " A defendant convicted of (1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or sex trafficking in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years . . ." From thereon, in other pages, there is lesser and lesser sentencing. There is always "if first offense." Victims live with pain for the rest of their lives, as the first testifier stated. Victims need time for healing. The lowest of the low who commit these crimes may face some time in prison, but they will offend again and again when released back in communities. These predators, once caught, need one thing and one thing only. Life in prison, no parole, no time off for good behavior. There should be a wing in prisons for just these predators. This has gone on too long. Predators will rape and defile over and over, until they die in prison or are taken out by law enforcement or private citizens protecting themselves. He asked the committee to please change sentencing for predators to show they are not welcome in Alaska.

TANIA SILVA-JOHNSON, representing herself, Kodiak, said she supported SB 12 and SB 35 and wanted to echo what others had said. She shared that she was raped her senior year of high school. Since then, she has continued to speak out in her community to raise awareness and help other victims come forward, if they so choose. She has discovered that so many women she went to school with at Kodiak and at the University of Alaska Fairbanks were also raped by someone they knew and never reported it. She said why report when there are no consequences. They need accountability. Surviving a rape requires intensive therapy, and even when overcome, that scar is still there. It is critically important that they have accountability. "So often we hear, do they deserve to lose this, do they deserve to lose their career. Yes. The price has been too high for victims and for too long," she said.

CHAIR HUGHES thanked Ms. Silva-Johnson for her bravery and for connecting low reporting to sentences that are lenient. If sentences are tougher, reporting will probably go up.

SENATOR REINBOLD said her story, sadly, in Alaska is common. It is not just about this bill. She asked her to continue to

communicate her concerns. Senator Reinbold said she has heard, for example, of bad court rules that need to be changed. Her fight is worth fighting. It has risen to be one of their top priorities.

CHAIR HUGHES, after determining that no one else wished to testify, closed public testimony on SB 12 and SB 35. She noted that they would continue the sectional on SB 35.

2:28:05 PM

JOHN SKIDMORE, Director, Criminal Division, Department of Law, Anchorage, continued presenting a sectional analysis of SB 35. He said the committee left off at Section 13. Since Section 13 is similar to what is in SB 12, he would start with Section 14.

SENATOR REINBOLD said the last line of Section 12 was written bizarrely and could be interpreted in many ways. She recommended that he revise it to make it clearer.

MR. SKIDMORE asked for clarification about whether there was something wrong with the way the bill was written or just the sectional analysis.

SENATOR REINBOLD answered the sectional analysis.

MR. SKIDMORE said they would look at how to amend that to make that clearer. He restated that Section 13 would become part of SB 12. Section 14 creates an enhanced sentencing structure for assault in the second degree. It is in this particular bill because that subsection of assault in the second degree is talking about strangulation. In criminal justice reform, when all the presumptive sentencing ranges were adjusted down, this specific class B felony went from one to three years down to zero to two. This particular subsection moves it back to one to three so that anyone who did engage in assault in the second degree, which includes the conduct of strangulation, would be facing a presumptive of one to three years. This is complementary to what Senator Micciche has done in SB 12, which has strangulation to the point of unconsciousness as an A felony as opposed to a B felony. Section 14 is somewhat overlapping of a section in SB 32, which was seeking to remove all sentencing back to where it was prior to SB 91. If SB 32 does not make it through the legislature, then this particular section in SB 35 ensures that at least those assault offenses that include strangulation would have that increased sentencing range.

SENATOR REINBOLD clarified that he is suggesting changing the sentencing from zero to two years to one to three years. "Is that all the value a victim's trauma is worth?" she asked.

2:32:10 PM

MR. SKIDMORE responded that prior to SB 91, class B felonies for a first offense was sentenced at one to three years, a second offense was four to seven, and the third was six to ten. Under SB 91, the first offense was reduced to zero to two. He cannot recall the provisions for the second and third offenses but could look that up. This bill proposes to return those provisions to where they were before SB 91. As far as her question of is that amount of time appropriate, that was in statute prior. There are aggravators to look at. If the committee thinks the levels are not high enough, they are always willing to work with the committee on that.

CHAIR HUGHES said she had talked with the Department of Law that morning about that same concern. She was surprised about the minimal amount of time. She stated that she also had discussed with Senator Micciche the distinction between strangulation for the purpose of hurting or intimidating someone, but when connected to sexual offense, it is not only to hurt and intimidate the person but to also take advantage of the person. That rises to a different level of concern, so they are looking at how they might address that.

2:34:04 PM

SENATOR REINBOLD said she is just appalled that if they get caught the third time, their penalty is only six to ten years. "It makes me realize why there is so much crime up here. Even pre-Senate Bill 91 I said I thought our laws were way too soft. That's why I thought it was absolutely incredibly lunacy to pass SB 91. I think everybody in the state probably knows about that by now, but to think that we had such dramatic domestic violence and sexual assault in Alaska and then passed that bill that lowered the sentences, that ended up letting people earn credit, that produced this silly pretrial risk assessment tool that let so many people out. This just makes me shocked that for the third time they do something like that, even with the correction, it's six to ten years and then you add on the earned compliance credit and all that stuff and they might be walking really quickly. I just don't think this is enough," she said.

SENATOR MICCICHE said to clarify for the public, if they make the changes they are talking about, there will be three levels of strangulation. He asked Mr. Skidmore to clarify that in



Section 14, this is strangulation, charges of assault, not strangulation that results in someone becoming unconscious or strangulation resulting in a sexual assault.

MR. SKIDMORE answered correct. Section 14 is just about strangulation as they have it under the law now. SB 12 creates a second tier of strangulation offenses where someone is strangled to the point of unconsciousness. The concept that Chair Hughes discussed is trying to have some enhanced sentencing for strangulation associated with some sort of sex offense. That is not in any bill currently, but it is a conversation they started this morning. They are interested in working with the committee with any amendments they might have.

[2:36:36 PM](#)

SENATOR MICCICHE said he is just clarifying for the public that they are repealing that section of SB 91 and adding two additional layers of much stricter law on top of 91. It is easy for people who watch periodically to become confused. If they make the amendment to SB 12 that she is talking about, they will have three layers, with two layers related to unconsciousness and sexual assault being significantly stricter.

CHAIR HUGHES said to be transparent, since this is a process, it looks like they will put all things regarding strangulation into SB 12. They are going over SB 35 now, but will combine everything in SB 12 for clarity, so the public and the next committee of referral will be able to grasp what they are doing with that.

SENATOR REINBOLD stated the sentencing ranges: if a first felony, (A) a child under age 16, two to four years, with 16 or older, one to three years, if the offense is a second felony, two to five years, a third felony, four to ten years, and they could go on. She added that there are all those other ways they can earn credit, such as with electronic monitoring. They are not taking violent crime seriously enough in this state. "I stand firm in my beliefs," she said.

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MR. SKIDMORE directed attention to Section 15, which adds an offense for sexual abuse of a minor in the third degree. It will increase the sentencing if there is a six-year age gap. Sexual abuse of a minor in the third degree is when a victim is 13, 14, or 15 years of age and there is a four-year age difference between the offender and the victim with sexual contact. This section of the bill says that that if they are close in age,



four or five years apart, it is still a felony, but not a sexual felony. Under AS 12.55.125§(i), there are provisions that have a greater presumptive sentencing range for sexual offenses than for a regular felony. Sexual abuse of a minor in the third degree is currently classified as a regular C felony and does not carry with it those enhanced sentencing ranges for a sexual felony. If it did, it would be two to 12 years for a first offense as opposed to zero to two. This section increases it to that two to 12 years when the age difference is six years or more. The idea being that while it is still against the law if there is a four- or five-year age difference, once they get to the six-year age difference, it is seen as that predatory behavior. A testifier earlier was an example of a six-year age difference. This is the level at which bill proposes to turn it into a graver offense that carries much more significant penalties.

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MR. SKIDMORE said that Section 16 would clarify prior felonies for purposes of sex offenses. When they began the sectional analysis, there was some intent language to overturn a case that said for a sex offense to get to the higher presumptive ranges, if there had been a prior offense to get to the higher presumptive range, if that prior had been a sex offense, then the current offense would be deemed a higher level on the presumptive range with a greater sentence, but if the prior offense was a non-sex offense, it was applying a ten-year limitation in looking back for those offenses. That is to say, with presumptive sentencing, the prior felony only counts if it is within a certain time frame in order to increase sentencing for the current offense. For sex offenses there is no time frame. For all other felonies, there was. A court was interpreting the statute as though there was a time frame for a prior non-sex felony when determining presumptive sex sentencing. This section removes that to say that if someone has been convicted of a felony before, it does not matter how long ago that conviction was, it will result in an increase in the presumptive range for the current sex offense. That is what Section 16 does.

CHAIR HUGHES clarified that there is no time limit and any felony would count, not just sexual felonies.

MR. SKIDMORE answered correct. The current law says a non-sex prior can increase sentencing, but only if it is within ten years. This removes that ten years to make it clear that the ten years should not be considered when someone is currently

sentencing a sex offense, regardless of whether the prior was a sex offense or non-sex offense. It gets rid of the time frame for presumptive sentencing.

MR. SKIDMORE said Section 17 is a conforming amendment dealing with the crime of enticing a minor.

MR. SKIDMORE turned to Section 18, which he said adds sexual abuse of a minor to the third degree when there is six-year age difference. It is sort of a conforming amendment, but this adds it to the definition of a sexual felony, which is significant. This is not the section that increases the sentencing range, but it does have other impacts by defining it as a sexual felony. For instance, this impacts the treatment that can be imposed. It also affects whether there would be early termination. This definition has consequences not only for the amount of jail time imposed, but in terms of other factors that are considered in sentencing. They want to change this definition to ensure that sexual abuse of minor, when there is a six-year age difference, has all these other aspects that are important to the sentencing.

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MR. SKIDMORE said Section 19 adds a person who is required to register as a sex offender or child kidnapper from another jurisdiction to the element of sex offender or child kidnapper. Section 19 goes back to the intent language that they discussed in the previous hearing where they were overturning an appellate case that said individuals from another state, when they are required to register in that other state for that conviction, would not necessarily have to register in Alaska. They are changing the language of Alaska's law, so they are required to register in Alaska. That intent language relates to Section 19, he said.

SENATOR MICCICHE said that for Section 15 and 18, he thought it was sexual assault because someone was under the age of consent because it requires consent to not be a sexual assault. He asked for the age of consent in Alaska.

MR. SKIDMORE said they don't call it sexual assault. They refer to it as sexual abuse of a minor. Sexual abuse of a minor does not carry an element of consent or lack of consent. It just says when the sexual act occurs between these individuals. There are a series of factors that look at that to say that there is no possibility that consent occurred here, this is just criminal.

MR. SKIDMORE said there are a series of factors because the age of consent is generally deemed to be 16, in layman's terms, but the statutes talk about it when the victim is 13, 14, or 15 and other statutes talk about the victim being under the age of 13. But for 13, 14, or 15, consent is not an element. It only becomes an element for sexual assault when the person is over the age of 16.

SENATOR MICCICHE said it just gets to his question, which is if they are under the age of ability to consent, why is it not as serious, whether or not there is a six-year difference in age.

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MR. SKIDMORE responded that he wanted to be clear that the rationale he would be giving is not his opinion, but an explanation what the law says. The concept is that if young people close in age decide to be involved in a relationship that involves physical sexual conduct between the two, society has said that when the individuals are close in age, they do not want to turn either into a sex offender who has to register or go to jail. While parents may not approve, it is not a crime that needs to be punished by jail time and other consequences. The state has chosen 16 years of age as the age of consent and Alaska's laws require at least a four-year age difference before it becomes criminal. The four-year and six-year age difference are both illegal, but the bill has greater punishment for a six-year age difference.

CHAIR HUGHES noted that the committee had had quite a discussion about the sex offender registry. She referenced a recent KTVA news story and quoted, "A sex offender from Iowa said he chose to move to Alaska believing he wouldn't have to register as a sex offender. He was right--and it's a reality that would continue, even if the governor's crime bills are passed." This particular sex offender was convicted recently for sexual assault of a child that included penetration, which occurred just days after the offender arrived in Alaska. She asked if the provisions of SB 35 don't close this gap because there is no registry requirement for persons convicted of sex crimes as a juvenile, which is the case for this particular child rapist. If they amended SB 35 to include this requirement for those adjudicated for sex crimes as juveniles, she asked what they should consider from the Department of Law's perspective.

MR. SKIDMORE said that the state of Alaska does not require any juvenile adjudicated of sex crimes to register. There is some debate within the state about whether requiring juveniles to register would violate the state constitution. That has not been

determined by a court of law. That is an open and ongoing debate within the legal community. As to her question about requiring individuals from out of state, when they are required to register in another state as a sex offender for a juvenile adjudication, SB 35 does not require that because of the constitutional discussion. If the committee wants to propose an amendment like that, the department will need to look at the language carefully and could provide a more detailed policy and legal analysis about the concerns with the law. There are other states that require juveniles when they are adjudicated to register. Alaska is not one of those. If the committee is interested, he could provide a memo that outlines it more thoroughly.

CHAIR HUGHES asked him to provide that and to be thinking about how the committee could do that.

SENATOR REINBOLD said, "I guess this has just been a point of contention since I got down to Juneau, is a lawyer trying to tell us what is constitutional and what's not when we're told that is the role of the courts, not a random lawyer. That really bothers me when people start using that as a defense of why not to do things." Public safety is supposed to be first with the administration. These mothers and daughters want to know if someone has been convicted. They need to get these people to register, so people are aware early and do what they can to protect their daughters. She is a big fan of getting them on a registry.

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CHAIR HUGHES said they would not be asking juveniles to register, but at the point when they become adults. She noted that they had had much discussion last week about enforcement were they to implement the new sex offender registry laws. She asked if they could avoid the ipso facto issue that they discussed for enforcement as long as the offenders who are current residents in the state are provided a period of time to register once the law is passed. If the law were to take effect immediately, could it include a provision that anyone already in the state would have 90 days to comply with the new law by registering with the Department of Public Safety. She wondered whether that would work. They wouldn't be charged for not registering when they first arrived in the state, but they could be charged for not registering within certain dates.

MR. SKIDMORE said he would need several days to do research. Any time that he is testifying about any legal analysis, he tries to

make sure that they have had time to do a thorough legal analysis.

SENATOR MICCICHE said there a lot of areas to look at. They have public documentation in other states of individuals required to be on the sex offender registry but not in Alaska. It may be an outside of the box thing to look at. He thought the term was ex post facto on double jeopardy. The reality is that they are not reconvicting and repenalizing. They are simply communicating a postconviction condition from elsewhere. If there is something they really want to push, they could change SB 35 while doing sexual assault issues in SB 12, keeping that clean, and doing some of these other issues in SB 35.

MR. SKIDMORE said Section 20 adds the crime of indecent viewing or production of a person under the age of 16 or the indecent production of a photograph of an adult to the list of registerable sex offenses. They had some discussion last time about how this particular crime is broken down into four categories. There is the actual viewing, there is the production of the photograph, and is the victim a child or is the victim an adult. This section says that if the victim is a child, either for that viewing or the production, or for the production of a photograph where the victim is an adult, in those three circumstances, which becomes a registerable sex offense. It is not currently under the law, but Section 20 would change that.

MR. SKIDMORE said Section 21 clarifies that a person ineligible for a good time deduction from their sentence would also be ineligible for discretionary parole. There is discretionary and mandatory parole. If people behave while in custody, they are released after they have done two-thirds of the time. This section says that if they were ineligible for good time, that mandatory parole, then they would also be ineligible for discretionary. It restricts parole eligibility and ensures that those two marry up with each other. It is in this bill because that applies to a number of sex offenses.

MR. SKIDMORE said that Section 22 is the repealer. Only two sections are repealed and those are consistent with other policies they have already talked about throughout the bill. Section 23 is the applicability and eligibility date.

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CHAIR HUGHES said she wanted to raise a new topic regarding the fact that in the Justin Schneider case there was the question of whether it involved an element of kidnapping. She believed that

the Judiciary Committee should explore the question of whether prosecution has the tools it needs to prove kidnapping. In the Schneider case, the victim went into vehicle willingly and was not restrained, but when a vehicle is moving, someone cannot walk away. The prosecution felt a kidnapping charge could not be proven. She asked him to explain for the record how the facts of this case led to the prosecution dropping the kidnapping charge. She asked how often kidnapping convictions happen in Alaska and whether the Department of Law should ask for a change in statute to avoid dropping kidnapping charges. Her sense is that vehicles are often used to take young females to areas for sexual assault.

MR. SKIDMORE explained that kidnapping is found in AS 11.41.300. It says that kidnapping is if a person restrains another with the intent to inflict physical injury upon or sexually assault the restrained person or to place the restrained person or third person in apprehension that any person will be subject to serious physical injury or sexual assault. The restraint is later defined to restrict a person's movements unlawfully and without consent so as to interfere substantially with the person's liberty by confining the person in place where the restriction commences, and the restraint is without consent if it is accomplished by force, threat, or deception. Deception can qualify, but the difficulty with the Schneider case is the victim had requested a ride. She was taken in the direction she asked to go. They have to decide at what point does deception kick in and how far was the distance from that point in time until the offense occurred. Mr. Schneider was indicted for kidnapping originally, but they must look at case law along with statutes.

MR. SKIDMORE said the case law says that when a person restrains another with the intent to facilitate the commission of that offense, that restraint will not constitute a separate offense of kidnapping if is merely incidental to the commission of the offense. That case law comes from a court of appeals case called Alam. There were two Alam decisions, one in in 1989 and one in 1990, for the same case, but looked at twice by the court of appeals. The Alam decisions were about the concept of incidental restraint and what is the change in circumstances regarding location, where does deception kick in. With that sort of analysis, when they looked at the Schneider case more carefully, they decided that they would not meet their obligation to prove beyond a reasonable doubt that that deception occurred. She was willingly in a vehicle. They came to a location, they stopped, and he said he needed to find something he left in a parking

lot. When they get to the parking lot, he asked her to step outside, and only when he tackled her did it become obvious at that point that she was not willing to do any of this. At that point they realize there is deception, but they did not have sufficient evidence to prove when the deception started.

MR. SKIDMORE said he did not know whether something ought to be changed in the law. He would need to look at the Alam opinions more carefully. The Department of Law would need to research what precisely would need to be changed, whether it would be statutory, case history, or constitutional in order to provide any guidance.

CHAIR HUGHES asked him to think outside the Justin Schneider case as he considered whether a tool might be helpful to prosecution. It is a fact that young women are often tricked into riding in vehicles for the purpose of sexual assault.

SENATOR MICCICHE said it is important that the public know that he and Senator Reinbold agree that some crimes need to be charged more seriously in Alaska, but the public needs to fully understand what would be repealed of Senate Bill 91. The importance of 12 and 35, other than sentencing limits, is that most of these problems with their sexual assault laws are decades old. These are not new problems, which makes them different from the other series 30 crime bills repealing SB 91. This is making the laws tougher unrelated to SB 91. It needed to happen a long time ago. Sometimes a catalyst is needed for change to occur and many Alaskans know the outcome with Justin Schneider case is not satisfactory. He just wanted to clear that up. If it looked like there was disagreement, it was just him trying to clarify the SB 91 vs. other issues to the public because 91 has been such a lightning rod.

[SB 12 and SB 35 were held in committee.]

CHAIR HUGHES reviewed upcoming committee announcements.

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There being no further business to come before the committee, Chair Hughes adjourned the Senate Judiciary Standing Committee meeting at 3:13 p.m.